



**THE ATTORNEY GENERAL  
OF TEXAS**

**JIM MATTOX  
ATTORNEY GENERAL**

**July 9, 1990**

**Honorable Thomas Giovannitti  
County Attorney  
Schleicher County  
P. O. Box 692  
Eldorado, Texas 76936**

**LO-90-39**

**Dear Mr. Giovannitti:**

You request our opinion as to whether an elected county attorney may simultaneously hold a position as a paid part-time professor at a state university in an adjoining county.

Article 16, section 40, of the Texas Constitution provides, in part:

No person shall hold or exercise at the same time, more than one civil office of emolument. . . State employees or other individuals who receive all or part of their compensation either directly or indirectly from funds of the State of Texas and who are not state officers, shall not be barred from serving as members of the governing bodies of school districts, cities, towns, or other local governmental districts; provided, however, that such State employees or other individuals shall receive no salary for serving as members of such governing bodies.

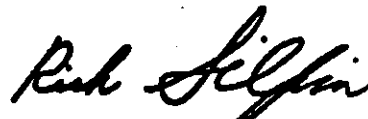
A college professor does not hold a civil office of emolument. Letter Advisory No. 137 (1977). Therefore, the prohibition on holding more than one office of emolument is not applicable here.

The other quoted portion of article 16, section 40, does impose a limitation upon certain "state employees . . . who receive all or part of their compensation . . . from funds of the State of Texas." See Attorney General Opinion JM-118 (1983) (holding that a public school teacher is prohibited from receiving compensation as a city

councilman). This limitation, however, applies only if the office is that of membership on the "governing bodies of school districts, cities, towns, or other local governmental districts." See also Attorney General Opinion MW-230 (1980). A county attorney is not a member of such a governing body. Thus, the limitation of article 16, section 40, does not prevent a county attorney from being paid as a part-time professor at a state university.

The common law doctrine of incompatibility also acts to prohibit dual office holding in certain instances, even where the Texas Constitution is no bar. In the present instance, we perceive no incompatibility between the positions of county attorney and that of part-time professor, especially where, as here, the state university in question is not located in the county in which the individual holds the position of elected county attorney. We conclude therefore that, under the circumstances you describe, the county attorney may simultaneously hold a position as a paid part-time professor at a state university in an adjoining county.

Very truly yours,



Rick Gilpin, Chairman  
Opinion Committee

RG/lcd

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